



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 24 OF 2019

BETWEEN

ANGELLA KUMWENDA PETITIONER

-AND-

LUMBANI KUMWENDA DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR

Chipeta, of Counsel for the Petitioner

Ms. Chijozi, of Counsel for the Respondent

Ms. Galafa, Court Clerk

ORDER ON TAXATION OF COSTS

Introduction

The Petitioner commenced this action on 15th November, 2019 by way of Petition for Divorce. She later withdrew the case and the matter has come for taxation of costs.

The Evidence

The Petitioner filed a Petition for Divorce and was seeking inter alia dissolution of marriage. The Respondent filed a defence to the claim seeking dismissal of the Petition. On 28th April, 2020, the Petitioner filed with the Court a Notice of Withdrawal of Action and on the same day filed a Petition before the Magistrate Court sitting at Blantyre. On 19th May, 2020, the High Court granted the Respondent

an Order staying the proceedings before the Magistrate Court pending assessment and payment of costs. The Respondent took out a Notice of Assessment of Costs which is the subject of these proceedings.

The Respondent filed Party and Party Bill of Costs. The Party and Party Bill of Costs was filed without an Assessment Bundle. The Petitioner filed objections to the Party and Party Bill of Costs. Counsel for the Respondent is Counsel of 13 years at the Malawi Bar. The Respondent is claiming a total sum of K4,319,750.00 as billable costs to which the Petitioner is objecting as the claim is too excessive and unreasonable considering nature of the case.

Applicable Law and Analysis

There are two bases on which costs may be taxed, namely standard basis and indemnity basis - Order 31 rule 4(1) of the Courts (High Court) (Civil Procedure) Rules. Where an order for costs is made without indicating the basis on which the costs are to be taxed, costs will always be taxed on the standard basis - Order 31 rule 4(4) of the Courts (High Court) (Civil Procedure) Rules.

In *Chisomo Chidodwe Chinthuzi v First Capital Bank* Commercial Case No. 1 of 2019 (High Court, Commercial Division, Blantyre Registry) the Court stated that

“In the present matter, the relevant order for costs did not indicate the basis on which the same are to be taxed. It follows, therefore, that the costs herein shall be taxed on the standard basis. Where costs are to be taxed on the standard basis, the court only allows costs which are proportionate to the matters in issue and resolves any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party (Order 31 rule 4(2) of the Courts (High Court) (Civil Procedure) Rules 2017).”

The Court went on to say that

“In taxing costs, the court takes into account the conduct of all the parties, the amount or value of any money or property involved, the importance of the matter to all the parties, the particular complexity of the matter or the difficulty or novelty of the questions raised, the skill or effort or specialized knowledge or responsibility involved, the time spent on the case and the place where and

the circumstances in which work or any part of it was done (Order 31 rule 5(3) of the Courts (High Court) (Civil Procedure) Rules 2017).”

When assessing costs, courts take into consideration that costs must be proportionately and reasonably incurred or must be proportionate and reasonable in amount – Order 35 rule 5 (1) (a) of the Courts (High Court) (Civil Procedure) Rules.

Courts also take into account some general factors – Order 31 rule 5 of the Courts (High Court) (Civil Procedure) Rules. These, amongst others, are:

- (a) conduct of the parties and efforts to resolve the matter;
- (b) the particular complexity of the matter or the difficulty and novelty of the issues involved; and
- (c) time spent on the matter.

Order 31 Rule 12 (3) of the Courts (High Court) (Civil Procedure) Rules provides that the Bill of Costs is supposed to be accompanied by an Assessment Bundle with all documents that the Respondent is relying on.

This case is a divorce matter. It is based on divorce principles which are well developed and not novel at all. It is, therefore, not a complex matter especially for Counsel of 13 years’ experience at the Malawi Bar. In addition, the facts and the documents were not complex. The matter did not go to trial. It was withdrawn after the defence was filed. So, the costs must reflect the stage at which the proceedings ended.

In addition, the Party and Party Bill of Costs was not accompanied by an Assessment Bundle with all the documents that the Respondent is relying on. There was no evidence of Counsel transcription e.g. notes and time sheet for the Court to appreciate the hours that were claimed.

The costs being claimed by the Respondent are too high. They are not reasonable and not proportionate to the matter.

Award of Costs

This Court is of the view that a sum of K500,000.00 payable to the Respondent as costs is reasonable in the circumstances of this case.

It is so ordered.

Pronounced in Court this 20th day of August, 2020 at Blantyre.



Edna Bodole

ASSISTANT REGISTRAR